

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHERRI J. MITCHELL

Defendant.

Case No. CR99-5213RJB

ORDER ON MOTION FOR ORDER  
DECLARING SATISFACTION OF  
RESTITUTION OBLIGATION

This matter comes before the court on the above-referenced motion (Dkt. 27). The court is familiar with the records and files herein and documents filed in support of and in opposition to the motion, including a letter with attachments filed by defendant (Dkt. 25).

Defendant's motion is for an order adjusting restitution and finding restitution to be satisfied. Dkt. 27. The request is based upon an apparent settlement defendant entered into with Cumis Insurance Society for less than the full balance of the restitution amount than the court had ordered at sentencing. In an amended judgment and sentence entered on 29 October 1999 (Dkt. 21), the court ordered the defendant to pay restitution to Cumis Insurance Society in the amount of \$33,800.14. One hundred dollars restitution was also ordered paid to the Twin County Credit Union. This latter obligation is not an issue in this motion. The defendant has now filed three

ORDER ON MOTION FOR ORDER DECLARING SATISFACTION OF RESTITUTION  
OBLIGATION - 1

1 documents from Cumis Insurance Society indicating payment of certain obligations. As attachments  
2 to Docket 27, the defendant filed a Satisfaction of Judgment in Pierce County Superior Court, Cause  
3 No. 99-2-06656-7, which indicated satisfaction “of the judgment signed by the judge on 10/4/05.”  
4 Defendant also filed a Satisfaction of Judgment from Thurston County Superior Court referencing  
5 judgment number 99-00973-1 and Superior Court Cause No. 99-2-00888-7. This document  
6 reflected satisfaction “of the judgment signed by the judge on May 12, 1999.” Also filed was a  
7 receipt from Cumis Insurance Society, Inc., on CUNA Mutual Group letterhead, indicating receipt of  
8 \$10,000 and marked “paid in full per our agreement.” The latter two documents were also filed as  
9 attachments to the motion (Dkt. 27). The Judgment and Restitution Order in this case was not  
10 referenced in any of the documents from the victim, Cumis Insurance Society. While defendant  
11 argues that she has now fully satisfied all of Cumis Insurance Society’s claims, the record is not clear  
12 that the documents filed are intended to satisfy the restitution obligation in this case or whether the  
13 state judgments referenced represent the same monies covered by the restitution order.

14 Also missing from the file is any indication that the victim, Cumis Insurance Society, has been  
15 notified of these proceedings.

16 The court ordered restitution in this matter pursuant to 18 U.S.C. § 3556 and 18 U.S.C. §  
17 3663 and § 3663(a), the Mandatory Victim Restitution Statute. Pursuant to 18 U.S.C. § 3556, the  
18 procedures under 18 U.S.C. § 3664 apply to restitution orders.

19 In setting restitution, the court has authority to set scheduled payments as well as the total  
20 amount. 18 U.S.C. § 3572(d)(2). It should be noted that restitution is not in and of itself  
21 punishment, but is for the purpose of making crime victims whole. United States v. Gordon, 393  
22 F.3d 1044 (9<sup>th</sup> Cir. 2004). Nevertheless, restitution obligations are considered by the court in  
23 determining the punishments to be imposed at sentencing. In other words, financial obligations are  
24 coordinated by the court at sentencing.

1 Although couched in terms of an order pursuant to 18 U.S.C. § 3572, an order of restitution  
2 is a final judgment pursuant to 18 U.S.C. § 3664(o). Nevertheless, the law provides that a  
3 judgment/order of restitution may be adjusted. 18 U.S.C. §3664(o)(1)(D). That section refers to  
4 adjustments under 18 U.S.C. § 3664(k), which in turn provides that upon notice of a material change  
5 in the “defendant’s economic circumstances” and upon notice to the victim, “the court may, on its  
6 own motion, or the motion of any party, including the victim, adjust the payment schedule or require  
7 immediate payment in full as the interest of justice so requires.” It follows from that statute that the  
8 court has the power to suspend payments on restitution and it appears to the court that inherent  
9 within that statute is the authority for the court to determine balances due on restitution. The ability  
10 to adjust the payment schedule would mean nothing if the court did not have the authority to  
11 determine balances due.

12 There are additional observations that should be made regarding this case. If the victim did  
13 settle plaintiff’s obligations to it, the victim could no longer accept additional restitution payments  
14 from the defendant. Since restitution is designed to make the victim whole and not to increase the  
15 federal treasury, the federal government could not accept further restitution payments. In other  
16 words, if the defendant’s view of this matter is accurate, there is no one left to accept payments on a  
17 satisfied debt.

18 While defendant may have attempted to settle her restitution obligation directly with the  
19 victim, the issue of satisfaction of restitution is not now presented ex parte.

20 The court should reset this matter so that the parties can notify the victim of the material  
21 change of economic circumstances the defendant urges (that is, settlement in full of the obligation to  
22 the victim), and so that the victim will have the opportunity to either file appropriate documentation  
23 indicating payment of the restitution obligation to its satisfaction or to contest defendant’s position,  
24 all pursuant to 18 U.S.C. § 3664(k) and § 3771.

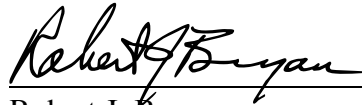
1 The parties should confer on the appropriate notice to the victim so that plaintiff can make  
2 the proper certification of notice to the court as required by 18 U.S.C. § 3664(k).

3 Any supplemental pleadings or documents should be filed on or before December 22, 2005,  
4 and the motion is reset for consideration on December 23, 2005..

5 **IT IS SO ORDERED.**

6 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of  
7 record and to any party appearing *pro se* at said party's last known address.

8 DATED this 29<sup>th</sup> day of November, 2005.

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10 Robert J. Bryan  
11 United States District Judge  
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